

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Defendant National Railroad Passenger Corporation d/b/a (“Amtrak”) by and through its attorneys, hereby removes the above-captioned action, currently pending in the Superior Court of King County, Washington, to the United States District Court for the Western District of Washington. Removal is based on 28 U.S.C. §§ 1331, 1332, 1349, and 1367 and authorized by 28 U.S.C. §§ 1441 and 1446. As grounds for removal, Defendant states:

I. BACKGROUND

Plaintiff commenced this action by filing her lawsuit in King County Superior Court, on or about January 3, 2018, under Cause No. 18-2-00341-5 SEA (the “State Court Action”). Pursuant to LCR 101(b), a true and correct copy of the operative complaint in the State Court Action is appended hereto as **Exhibit A**.

II. STATUTORY REQUIREMENTS

26 A. Federal Question Jurisdiction. Federal question jurisdiction exists in this action
27 because Plaintiff has asserted a claim against Amtrak, a federally chartered corporation whose
NOTICE OF REMOVAL TO FEDERAL COURT - 1 LANE POWELL PC

1 majority stockholder is the United States of America.

2 Amtrak was created under the Rail Passenger Service Act of 1970, 45 U.S.C. § 541, *et*
 3 *seq.* (recodified as 49 U.S.C. § 24101-24709) and is therefore a federally chartered corporation.
 4 In the *Pacific Railroad Removal Cases*, 115 U.S. 1 (1885), the United States Supreme Court
 5 ruled that an action against a federally chartered corporation presented a federal question under
 6 28 U.S.C. § 1331. As a result, this Court has original jurisdiction of this action against Amtrak
 7 under 28 U.S.C. § 1331, which provides for original jurisdiction in cases that arise under the laws
 8 of the United States, and 28 U.S.C. § 1349, which provides for original jurisdiction over claims
 9 against corporations where the United States owns more than 50 percent of the capital stock. *See*
 10 *Aliotta v. National R.R. Passenger Corporation*, 315 F.3d 756 (7th Cir. 2003); *Walker v. National*
 11 *R.R. Passenger Corp.*, 703 F. Supp. 2d 495, 500 (D. Md. 2010) and *Hollus v. Amtrak*, 937 F.
 12 Supp. 1110, 1113-14 (D. N.J. 1996).

13 B. Diversity Jurisdiction.

14 1. Complete Diversity Exists. Diversity jurisdiction exists in this action because
 15 Plaintiff and Amtrak are citizens of different states. 28 U.S.C. § 1332(a)(1). “Complete diversity
 16 exists when the parties are domiciled in separate states.” *Umouyo v. Bank of Am., N.A.*, No. 2:16-
 17 CV-01576-RAJ, 2017 WL 1532664, at *2 (W.D. Wash. Apr. 28, 2017) (citing *Kanter v. Warner-*
 18 *Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001)). Plaintiff is domiciled in and is therefore a
 19 citizen of Washington. Yates Decl. ¶ 3; *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090
 20 (9th Cir. 1983). “Amtrak is a citizen only of the District of Columbia when deciding original
 21 jurisdiction of the district courts of the United States in a civil action.” 49 U.S.C. § 24301(b).
 22 Plaintiff and Amtrak are therefore citizens of different states for diversity jurisdiction purposes.
 23 Finally, the citizenship of “Doe” defendants is disregarded for purposes of the diversity
 24 jurisdiction analysis. 28 U.S.C. § 1441(b). *See* Complaint at ¶ 1.3.

25 2. Amount in Controversy. The Complaint seeks economic and noneconomic
 26 damages for alleged serious physical and mental injuries arising out of the December 18, 2017
 27 derailment of Amtrak Cascades Train No. 501. Complaint ¶¶ 5.1-5.2. Given the nature of

1 Plaintiff's claims and alleged damages, Amtrak alleges that the amount in controversy is expected
 2 to exceed the jurisdictional threshold of \$75,000. *See Dart Cherokee Basin Operating Co., LLC*
 3 v. *Owens*, 135 S. Ct. 547, 554, 190 L. Ed. 2d 495 (2014) (explaining that a removing defendant
 4 need only make "a plausible allegation that the amount in controversy exceeds the jurisdictional
 5 threshold" if the amount is not specified). The amount in controversy requirement is met.

6 **III. PROCEDURAL REQUIREMENTS**

7 A. Removal to this Court Is Proper. Pursuant to 28 U.S.C. §§ 1441(a)-(b) and
 8 1446(a), Defendant files this Notice of Removal in the United States District Court for the
 9 Western District of Washington, which is the federal district court embracing the state court
 10 where Plaintiff has brought the State Court Action - King County, Washington. Venue is proper
 11 in this district pursuant to 28 U.S.C. 1391(a) and 28 U.S.C. 128(b).

12 B. Removal Is Timely. Amtrak is unaware of having been served with a copy of the
 13 Summons and Complaint in the State Court Action. Yates Decl. ¶ 4. Defendant has filed this
 14 Notice within 30 days after its receipt of the Complaint in the State Court Action on or about
 15 January 3, 2018. As such, removal is timely. *See* 28 U.S.C. § 1446(b)(2)(B).

16 C. Consent. Consent is not required for removal under 28 U.S.C. § 1331 and there
 17 are no other defendants from whom to obtain consent to the extent this matter is removed under
 18 28 U.S.C. § 1332.

19 D. Bond and Verification. Pursuant to Section 1016 of the Judicial Improvements
 20 and Access to Justice Act of 1988, no bond is required in connection with this Notice of Removal.
 21 Pursuant to Section 1016 of the Act, this Notice need not be verified.

22 E. Signature. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11. *See*
 23 28 U.S.C. § 1446(a).

24 F. Pleadings and Process. True and correct copies of the pleadings on file in the
 25 State Court Action, including a current docket sheet, are attached to the Yates Decl. as Exhibit
 26 A. *See* 28 U.S.C. § 1446(a). Amtrak has paid the appropriate filing fee to the Clerk of this Court
 27 upon the filing of this Notice.

G. Notice. Amtrak will promptly serve Plaintiff and file with this Court its Notice of Removal to Plaintiff, informing Plaintiff that this matter has been removed to federal court. *See* 28 U.S.C. §§ 1446(a), (d). Amtrak will also promptly file with the Clerk of the Superior Court of Washington, County of King, and serve on Plaintiff, a Notice to Clerk of Removal to Federal Court, pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, this action should proceed in the United States District Court for the Western District of Washington, as an action properly removed thereto.

DATED this 17th day of January 2018.

LANE POWELL PC

By: /s/ Tim D. Wackerbarth
Tim D. Wackerbarth, WSBA No. 13673
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By: /s/ Andrew G. Yates
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Attorneys for Defendant National Railroad
Passenger Corporation d/b/a Amtrak

CERTIFICATE OF SERVICE

I, hereby certify under penalty of perjury of the laws of the State of Washington that on the 14th day of January 2018, I caused to be served a copy of the attached document to the following person(s) in the manner indicated below at the following address(es):

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 - by First Class Mail
 - by Hand Delivery
 - by Overnight Delivery

DATED this 1st day of January 2018.


Sabrina Mitchell

Sabrina Mitchell

NOTICE TO CLERK OF REMOVAL OF ACTION TO FEDERAL
COURT - 5
No. 18-2-00341-5

019188.0389/7186103.1

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EXHIBIT A

FILED

18 JAN 03 PM 2:23

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 18-2-00341-5 SEA

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

PENNIE COTTRELL, individually,

Plaintiff,

NO.

COMPLAINT FOR DAMAGES

v.

NATIONAL RAILROAD PASSENGER
CORPORATION d/b/a AMTRAK,

Defendant.

COMES NOW the Plaintiff and pursuant to the common law, the constitution and other statutes, and claims as follows:

1. **IDENTIFICATION OF PARTIES**

1.1 Plaintiff, Pennie Cottrell, is an adult U.S. citizen.

1.2 Defendant, NATIONAL RAILROAD PASSENGER CORPORATION a/ka/ AMTRAK (AMTRAK), is a corporation organized and existing under the laws of the United States of America with a principal place of business in Washington, D.C. Defendant AMTRAK has an office for the transaction of business, and transacts business in King County, Washington.

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1.3 There may be unknown entities or “John Does” who may be at fault and when their identification becomes known, these pleadings may be amended accordingly.

2. JURISDICTION AND VENUE

2.1 The court has general and specific jurisdiction over the claims asserted herein by Plaintiff pursuant to RCW 4.28.185 and other Washington statutes. Venue is proper in King County, Washington, as AMTRAK resides in King County within the meaning of RCW 4.12.025 as it transacts business in King County, has an office for the transaction of business within King County, transacted business in King County at the time this cause of action arose, and/or has persons residing in King County upon whom service of process for the corporation may be made.

3. NATURE OF OCCURRENCE

3.1. On and before December 18, 2017, Defendant, AMTRAK, was a corporation doing business as a common carrier engaged in the transportation of passengers between various destinations in the State of Washington.

3.2 On December 18, 2017, Defendant, AMTRAK, through its employees and/or agents, operated, managed, maintained, supervised, owned, designed, constructed and/or controlled AMTRAK Train No. 501, that originated in Seattle, Washington and was destined for other stops.

3.3 Pennie Cottrell purchased tickets, and on December 18, 2017, boarded AMTRAK Train No. 501 at the King Street Station in Seattle, Washington.

3.4 At approximately 7:33 a.m., AMTRAK Train No. 501 traveled on a segment of railroad track about 40 miles south of Seattle, Washington that was operated, managed, maintained, supervised, owned, designed, constructed and/or controlled, or contracted to operate,

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1 manage, maintain, supervise, own and/or control by Defendant AMTRAK. AMTRAK Train No.
2 501 was operated by employees and/or agents of Defendant AMTRAK.

3 3.5 A sharp and dangerous curve existed on this segment where the railroad track
4 crossed over I-5 from west to east.

5 3.6 On December 18, 2017, at approximately 7:33 a.m., AMTRAK Train No. 501
6 approached the curve and bridge crossing I-5 at a speed greatly exceeding the authorized, posted,
7 safe and lawful speed limit for this segment of the track.

8 3.7 AMTRAK Train No. 501 derailed through the curve and at the bridge crossing I-5,
9 causing serious injuries to Pennie Cottrell who was a passenger on board the train.

10 3.8 At all times relevant to this accident, Defendant AMTRAK equipped AMTRAK
11 Train No. 501 with a Positive Train Control system (hereinafter "PTC"), but knowingly failed to
12 make the system operable.

13 3.9 In 2008, Congress enacted the Rail Safety Improvement Act of 2008 (RSIA), which
14 requires passenger railroads to install a PTC system no later than the end of 2015.

15 3.10 The PTC systems mandated by Congress were designed specifically to increase
16 safety and prevent derailments caused by excessive speeds, among other purposes.

17 3.11 PTC provides real-time information to train crew members about, among other
18 things, the areas in which a train must be slowed or stopped and the speed limits at approaching
19 curves and other reduced-speed locations.

20 3.12 PTC also warns the train crew of the train's safe braking distance in curved or
21 reduced-speed locations, and displays the same on screens inside the locomotive's cab.

3.13 If the engineer does not respond to the ample warnings and on-screen displays, the positive train control system will automatically activate the brakes and safely slow or stop the train.

3.14 At all times relevant hereto, PTC systems were affordable, available, feasible, and intended to improve safety.

3.15 Defendant, AMTRAK, knowingly and intentionally failed to put in place and utilize an operable PTC or similar safety control system on the AMTRAK Train No. 501 and the segment of railroad track where this tragic and preventable accident occurred.

3.19 The failure to have PTC was a factor that caused AMTRAK Train No. 188 to derail in Philadelphia, PA, in 2015.

3.20 For at least two (2) years prior to December 18, 2017, Defendant, AMTRAK, knew that train control systems could prevent derailments.

3.21 Defendant AMTRAK failed to use available train control systems and other safety technologies that would have prevented the derailment.

4. NATURE OF LIABILITY

4.1 Plaintiff's injuries, damages and losses were proximately caused by Defendant AMTRAK's wrongful conduct under common law, federal and state statutes and regulations, and the Washington Consumer Protection Act, rendering defendant liable and at fault for all injuries and damages.

4.2 On December 18, 2017, Defendant AMTRAK, through its agents and/or employees, was a common carrier and owed passenger Pennie Cottrell the highest duty of care.

4.3 Defendant AMTRAK through its agents and/or employees, was at fault and violated the highest duty of care, including but not limited to one or more of the following ways:

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- 1 a. Failed to slow down its train at the aforesaid point when it knew or should have
2 known that the speed was too fast for the sharp and dangerous curve;
- 3 b. Operated the train in excess of the authorized, posted, safe and lawful speed limit;
- 4 c. Failed to install and render operable proper train-control safety and speed system;
- 5 d. Operated the train without keeping a safe and proper lookout;
- 6 e. Failed to comply with Defendant's own operational and safety plan, rules,
7 standards and procedures;
- 8 f. Failed to comply with the applicable federal standards of care, including but not
9 limited to the failure to comply with applicable federal statutes or regulations;
- 10 g. Failed to properly train its agents and/or employees in the safe operations of the
11 train;
- 12 h. Failed to properly supervise its agents and/or employees in the proper operation of
13 the train.

14 4.4 Defendant AMTRAK is also liable for punitive and/or exemplary damages under
15 choice of law principles for the reckless and/or willful disregard of the rights and safety of the
16 passengers and the public.

17 4.5 Defendant AMTRAK failed to provide material information to Pennie Cottrell, thus
18 acting unfairly or deceptively in trade or commerce in violation of the Washington Consumer
19 Protection Act, RCW 19.86. et seq., including, but not limited to, the failure to inform her that:

- 20 a. The engineer had insufficient experience and training to safely operate AMTRAK
21 Train No. 501 on the route originating in Seattle on December 18, 2017;
- 22 b. AMTRAK operated the train with an assistant conductor who was neither certified
23 nor qualified;
- 24 c. AMTRAK operated the train without enabling and/or providing a fully operational
PTC or other safety devices.

25 5. **INJURIES, HARM AND DAMAGES**

5.1 As a direct and proximate result of one or more of the aforesaid acts and/or omissions of the Defendant AMTRAK, Plaintiff has suffered physical and emotional injuries, including but not limited to multiple broken bones requiring past and future medical care, disability, loss of enjoyment of life, pain, anxiety, distress and emotional trauma, physical impairment and disfigurement, pecuniary and economic losses, and other injuries, harm and noneconomic damages which are ongoing and which the total amount will be proven at trial;

5.2 Plaintiff has suffered injury and damages, including loss of business or property as a result of Defendant AMTRAK's violation of the Consumer Protection Act.

6. RELIEF CLAIMED

6.1 Plaintiff claims all economic and non-economic damages along with all compensatory, pecuniary and exemplary damages.

6.2 Plaintiffs claim all fees and costs, including attorney's fees, treble damages, and prejudgment interest and all other damages recoverable under Washington's Consumer Protection Act.

6.3 Plaintiff seeks injunctive relief to protect the public.

6.4 Plaintiff reserves the right to seek other damages as appropriate.

WHEREFORE, Plaintiff Pennie Cottrell prays for judgment against Defendant, NATIONAL RAILROAD PASSENGER CORPORATION d/b/a AMTRAK, in such amount as will be proven at the time of trial, together with such other and further relief as the jury or court deems appropriate.

DATED this 3rd day of January, 2018.

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/s/ Robert N. Gellatly
Robert N. Gellatly, WSBA 15284

COMPLAINT FOR DAMAGES - 6

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